

AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 191

Introduced by Senator Alarcon

February 12, 2003

~~An act to amend Section 1252 of the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor. An act to amend Sections 11735, 11736, and 11737 of, and to add Sections 11732.7, 11732.8, 11735.5, and 11742 to, the Insurance Code, relating to workers' compensation insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 191, as amended, Alarcon. ~~Unemployment—Workers' compensation insurance: rates.~~

Existing law requires a rating organization to develop pure premium rates, as defined, for workers' compensation insurance, and requires the commissioner to approve, disapprove, or modify those pure premium rates. Existing law requires every workers' compensation insurer to adhere to a uniform experience rating plan approved by the Insurance Commissioner that uses past insurance experience of an individual policyholder to forecast future losses, as specified. Existing law places certain restrictions on workers' compensation insurance rates and requires the commissioner to disapprove rates in specified circumstances.

This bill would prohibit workers' compensation rates from being excessive, would describe when rates are to be deemed excessive, and would require the commissioner to disapprove rates so deemed. The bill would require a workers' compensation insurer that desires to use any rates lower than the pure premium rates approved by the commissioner to file a complete rate application with the commissioner, as specified.

Existing law sets forth elements that an experience rating plan must contain, as specified.

This bill would require, in addition, that an experience rating plan contain a provision for rewarding employers, however small, that have been claim free for 2 years prior to the issuance of a policy.

The bill would require the commissioner, on or before an unspecified date, to establish and maintain, on the Internet Web site maintained by the department, an online rate comparison guide showing workers' compensation insurance rates for the 50 insurance companies writing the highest volume of business in this line during the 2 preceding years, and other specified information.

The bill would provide that it would not become operative unless SB 229 of the 2003–04 legislative session becomes operative.

~~For purposes of qualifying for unemployment insurance, existing law provides that an individual is “unemployed” if, among other things, in any week of less than full-time work the wages payable to him or her with respect to that week, when reduced by \$25 or 25% of the wages payable, whichever is greater, do not equal or exceed his or her weekly unemployment compensation benefit amount.~~

~~This bill would instead provide that an individual is “unemployed” in any week of less than full-time work if the wages payable to him or her with respect to that week, when reduced by \$50 or 40% of the wages payable, whichever is greater, do not equal or exceed his or her weekly unemployment compensation benefit amount.~~

~~Because this provision would increase the amount of unemployment compensation paid, it would increase the amount payable from the Unemployment Fund, a continuously appropriated special fund, and thereby would make an appropriation.~~

Vote: majority. Appropriation: ~~yes~~ no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 1252 of the Unemployment Insurance~~
- 2 ~~SECTION 1. Section 11732.7 is added to the Insurance Code,~~
- 3 ~~to read:~~
- 4 ~~11732.7. Rates shall not be excessive. Rates are excessive if~~
- 5 ~~they are likely to produce a long run profit that is unreasonably~~
- 6 ~~high for the insurance provided, or if expenses are unreasonably~~
- 7 ~~high in relation to the services rendered.~~

1 SEC. 2. Section 11732.8 is added to the Insurance Code, to
2 read:

3 11732.8. In considering whether a rate is excessive,
4 inadequate, or unfairly discriminatory, the commissioner shall
5 consider whether the rate mathematically reflects the insurance
6 company's investment income and shall not consider the degree of
7 competition.

8 SEC. 3. Section 11735 of the Insurance Code is amended to
9 read:

10 11735. (a) Every insurer shall file with the commissioner all
11 rates and supplementary rate information that are to be used in this
12 state. The rates and supplementary rate information shall be filed
13 not later than 30 days prior to the effective date. Upon application
14 by the filer, the commissioner may authorize an earlier effective
15 date. To the extent possible, rates and supplementary rate
16 information shall be based upon supporting information derived
17 from the experience or data of the insurer, rating organization,
18 advisory organization, or other insurers. For the purposes of this
19 subdivision, "rating organization" shall have the same meaning
20 as set forth in subdivision (b) of Section 11750.1, and "advisory
21 organization" shall have the same meaning as set forth in
22 subdivision (e) of that section.

23 (b) Every insurer that desires to use any rates that are lower
24 than the pure premium rates issued or approved by the
25 commissioner pursuant to subdivision (b) of Section 11750 shall
26 first submit those rates to the commissioner for approval as
27 provided in Section 11735.5.

28 (c) Rates filed pursuant to this section shall be filed in the form
29 and manner prescribed by the commissioner. All rates,
30 supplementary rate information, and any supporting information
31 for rates filed under this article, as soon as filed, shall be open to
32 public inspection at any reasonable time. Copies may be obtained
33 by any person upon request and the payment of a reasonable
34 charge.

35 ~~(e)~~

36 (d) Upon the written application of the insurer and insured,
37 stating its reasons therefor, filed with the commissioner, a rate in
38 excess of that provided by a filing otherwise applicable may be
39 used on any specific risk.

40 ~~(d)~~

1 (e) Notwithstanding Section 679.70, no rating organization
2 may issue, nor may any insurer use, any classification system or
3 rate, as applied or used, that violates Section 679.71 or 679.72 or
4 that violates the Unruh Civil Rights Act.

5 ~~(e)~~

6 (f) Notwithstanding Sections 11657 to 11660, inclusive,
7 supplementary rate information filed with the commissioner for
8 purposes of offering deductibles to policyholders for all or part of
9 benefits payable under the policy shall be deemed complete if the
10 filing contains all of the following:

11 (1) A copy of the deductible endorsement that is to be attached
12 to the policy to effectuate deductible coverage.

13 (2) Endorsement language that protects the rights of injured
14 workers and ensures that benefits are paid by the insurer without
15 regard to any deductible. The endorsement shall specify that the
16 nonpayment of deductible amounts by the policyholder shall not
17 relieve the insurer from the payment of compensation for injuries
18 sustained by the employee during the period of time the endorsed
19 policy was in effect. The endorsement shall provide that
20 deductible policies for workers' compensation insurance coverage
21 shall not be terminated retroactively for the nonpayment of
22 deductible amounts.

23 (3) The endorsement shall provide that notwithstanding the
24 deductible, the insurer shall pay all of the obligations of the
25 employer for workers' compensation benefits for injuries
26 occurring during the policy period. Payment by the insurer of any
27 amounts within the deductible shall be treated as an advancement
28 of funds by the insurer to the employer and shall create a legal
29 obligation for reimbursements, and may be secured by appropriate
30 security.

31 (4) The endorsement shall specify whether loss adjustment
32 expenses are to be treated as advancements within the deductible
33 to be reimbursed by the employer.

34 (5) An explanation of premium reductions reflecting the type
35 and level of the deductible shall be clearly set forth for the
36 policyholder.

37 (6) The filing shall provide that premium reductions for
38 deductibles are determined before application of any experience
39 modification, premium surcharge, or premium discount, and the

premium reductions reflect the type and level of deductible consistent with accepted actuarial standards.

(7) The filing shall provide that the nonpayment of deductible amounts by the insured employer to its insurer, or the failure to comply with any security-related terms of the policy, shall be treated under the policy in the same manner as the payment or nonpayment of the premium pursuant to paragraph (1) of subdivision (b) of Section 676.8.

~~(f)~~

(g) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of an experience rating plan on the same basis as losses under policies providing first dollar coverage.

SEC. 4. Section 11735.5 is added to the Insurance Code, to read:

11735.5. (a) Every insurer that desires to use any rates lower than the pure premium rates issued or approved by the commissioner shall file a complete rate application with the commissioner. A complete rate application shall include all data as required by Section 11735 and any other information that the commissioner may require. The applicant shall have the burden of proving that the requested rate meets the requirements of this article.

(b) The application shall be deemed approved sixty days after received by the commissioner unless the application has been disapproved by the commissioner.

(c) If the commissioner disapproves a rate application filed pursuant to subdivision (a), the commissioner shall do each of the following:

(1) Immediately serve notice on the insurer of the disapproval. An insurer whose rates have been disapproved pursuant to subdivision (a) may, within 20 days of the date of the notice of disapproval, request a hearing, and the commissioner shall hold a hearing within 60 days of the date of the notice of disapproval.

(2) Within 20 days of the notice of disapproval, issue an order specifying in what respects the rate fails to meet the requirements of this article and stating when, within a reasonable period thereafter, that rate shall be discontinued for any policy issued or renewed after a date specified in the order. If a hearing is held pursuant to paragraph (1), the order shall be issued, instead,

1 within 30 days after the close of the hearing. The order may include
2 a provision for premium adjustment for the period after the
3 effective date of the order for policies in effect on that date.

4 (d) Whenever an insurer has no legally effective rates as a
5 result of the commissioner's disapproval of rates or other act, the
6 commissioner shall specify interim rates for the insurer that
7 protect the interests of all parties and may order that a specified
8 portion of the premiums be placed in an escrow account approved
9 by the commissioner. When new rates become legally effective, the
10 commissioner shall order the escrowed funds or any overcharge in
11 the interim rates to be distributed appropriately, except that
12 refunds of less than ten dollars (\$10) per policyholder shall not be
13 required. The commissioner shall order the insurer in the interim
14 to use rates that are, at a minimum, equal to the advisory pure
15 premium rates approved pursuant to subdivision (b) of Section
16 11750, as modified by the uniform experience rating plan
17 established pursuant to subdivision (c) of Section 11734, without
18 any deviations on account of any supplementary rate information,
19 until the time that a final determination of rates is agreed upon or
20 ordered through a hearing.

21 SEC. 5. Section 11736 of the Insurance Code is amended to
22 read:

23 11736. (a) An experience rating plan shall contain
24 reasonable eligibility standards, provide adequate incentives for
25 loss prevention, and shall provide for sufficient premium
26 differentials so as to encourage safety.

27 (b) An experience rating plan shall contain a provision for
28 rewarding employers, however small, that have been claim free for
29 two years prior to the issuance of a policy.

30 SEC. 6. Section 11737 of the Insurance Code is amended to
31 read:

32 11737. (a) The commissioner may disapprove a rate if the
33 insurer fails to comply with the filing requirements under Section
34 11735.

35 (b) The commissioner may disapprove rates if the
36 commissioner determines that premiums charged, in the
37 aggregate, resulting from the use of the rates or the rates as
38 modified by any supplementary rate information, would be
39 inadequate to cover an insurer's losses and expenses, unfairly

1 discriminatory, or tend to create a monopoly in the market
2 pursuant to Section 11732, 11732.5, or 11733.

3 (c) The commissioner shall disapprove rates if the
4 commissioner determines ~~that~~ *either of the following*:

5 (1) *That the rates are excessive.*

6 (2) *That premiums charged, in the aggregate, resulting from*
7 *the use of the rates or the rates as modified by any supplementary*
8 *rate information would, if continued in use, tend to impair or*
9 *threaten the solvency of an insurer. In determining whether the*
10 *premium charged in the aggregate would, if continued in use, tend*
11 *to impair or threaten the solvency of the insurer, the commissioner*
12 *shall consider the insurer's experience in other states.*

13 (d) If the commissioner intends to disapprove rates pursuant to
14 subdivision (a) or (b), the commissioner shall serve notice on the
15 insurer of the intent to disapprove and shall schedule a hearing to
16 commence within 60 days of the date of the notice.

17 (e) If the commissioner disapproves rates pursuant to
18 subdivision (c), the commissioner shall immediately serve notice
19 on the insurer of the disapproval. An insurer whose rates have been
20 disapproved pursuant to that subdivision may, within 20 days of
21 the date of the notice of disapproval, request a hearing, and the
22 commissioner shall hold a hearing within 60 days of the date of the
23 notice of disapproval.

24 (f) Every insurer or rating organization shall provide within
25 this state reasonable means whereby any person aggrieved by the
26 application of its filings may be heard by the insurer or rating
27 organization on written request to review the manner in which the
28 rating system has been applied in connection with the insurance
29 afforded or offered. If the insurer or rating organization fails to
30 grant or reject the request within 30 days, the applicant may
31 proceed in the same manner as if the application had been rejected.
32 Any party affected by the action of the insurer or rating
33 organization on the request may appeal, within 30 days after
34 written notice of the action, to the commissioner who, after a
35 hearing held within 60 days from the date on which the party
36 requests the appeal, or longer upon agreement of the parties and
37 not less than 10 days' written notice to the appellant and to the
38 insurer or rating organization, may affirm, modify, or reverse that
39 action. If the commissioner has information on the subject from
40 which the appeal is taken and believes that a reasonable basis for

1 the appeal does not exist or that the appeal is not made in good
2 faith, the commissioner may deny the appeal without a hearing.
3 The denial shall be in writing, set forth the basis for the denial, and
4 be served on all parties.

5 (g) If the commissioner disapproves a rate, the commissioner
6 shall issue an order specifying in what respects the rate fails to
7 meet the requirements of this article and stating when, within a
8 reasonable period thereafter, that rate shall be discontinued for any
9 policy issued or renewed after a date specified in the order. The
10 order shall be issued within 20 days after the notice prescribed in
11 subdivision (e) is served. If a hearing is held pursuant to
12 subdivision (d) or (e), the order shall be issued, instead, within 30
13 days after the close of the hearing. The order may include a
14 provision for premium adjustment for the period after the effective
15 date of the order for policies in effect on that date.

16 (h) Whenever an insurer has no legally effective rates as a result
17 of the commissioner's disapproval of rates or other act, the
18 commissioner shall specify interim rates for the insurer that
19 protect the interests of all parties and may order that a specified
20 portion of the premiums be placed in an escrow account approved
21 by the commissioner. When new rates become legally effective,
22 the commissioner shall order the escrowed funds or any
23 overcharge in the interim rates to be distributed appropriately,
24 except that refunds of less than ten dollars (\$10) per policyholder
25 shall not be required. However, if the commissioner has
26 disapproved rates pursuant to subdivision (c), the commissioner
27 shall order the insurer in the interim to use, at a minimum, the
28 approved advisory pure premium rates pursuant to subdivision (b)
29 of Section 11750, as modified by the uniform experience rating
30 plan established pursuant to subdivision (c) of Section 11734,
31 without any deviations on account of any supplementary rate
32 information and reflecting the actual expenses of the insurer, until
33 the time that a final determination of rates is adjudicated and
34 ordered through a hearing.

35 (i) Notwithstanding any other provision of law, an insurer may
36 increase rates on policies with inception dates prior to January 1,
37 2003, in an amount no greater than the pure premium rate increase
38 approved by the commissioner reflecting the cost of the change in
39 benefit levels authorized by the act adding this subdivision.

1 SEC. 7. Section 11742 is added to the Insurance Code, to
2 read:

3 11742. (a) The Legislature finds and declares that the
4 insolvencies of more than a dozen workers' compensation
5 insurance carriers have seriously constricted the market and led
6 to a dangerous increase in business at the State Compensation
7 Insurance Fund. Yet more than 200 insurance companies are still
8 licensed to offer workers' compensation insurance in California.
9 Unfortunately, many employers do not know which carriers are
10 offering coverage, and it is both difficult and time consuming to try
11 to get information on rates and coverages from competing
12 insurance companies. A central information source would help
13 employers find the required coverage at the best competitive rate.

14 (b) On or before _____, the commissioner shall establish and
15 maintain, on the Internet Web site maintained by the department,
16 an online rate comparison guide showing workers' compensation
17 insurance rates for the 50 insurance companies writing the highest
18 volume of business in this line during the two preceding years.

19 (c) The online comparison shall display rates for each class set
20 forth in the classification system adopted by the commissioner
21 pursuant to Section 11734, shall include the effective date of each
22 rate, and shall list the rates for each class from the lowest to the
23 highest rate.

24 SEC. 8. This act shall not become operative unless Senate Bill
25 229 of the 2003–04 legislative session becomes operative.

26 Code is amended to read:

27 1252. (a) An individual is “unemployed” in any week in
28 which he or she meets any of the following conditions:

29 (1) Any week during which he or she performs no services and
30 with respect to which no wages are payable to him or her.

31 (2) Any week of less than full-time work, if the wages payable
32 to him or her with respect to the week, when reduced by fifty
33 dollars (\$50) or 40 percent of the wages payable, whichever is
34 greater, do not equal or exceed his or her weekly benefit amount.

35 (3) Any week for which, except for the requirements of
36 subdivision (d) of Section 1253, he or she would be eligible for
37 benefits under Section 1253.5.

38 (4) Any week during which he or she performs full-time work
39 for five days as a juror, or as a witness under subpoena.

~~(b) Authorized regulations shall be prescribed making any distinctions as may be necessary in the procedures applicable to unemployed individuals as to total unemployment, part-total employment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work.~~

~~(c) For the purpose of this section only, "wages" includes any compensation for personal services whether performed as an employee or as an independent contractor, or as a juror or as a witness, but does not include any payment received by a member of the National Guard or reserve component of the Armed Forces for inactive duty training, annual training, or emergency state active duty.~~

